

Advisory Panel Meeting Notes June 23, 2006

Advisory Panel members in attendance:

Larry King	HP
John Merrell	Prima Technologies
Craig Loach	Total Reclaim
Mark Johnson	WRA
Vinay Goel	Apple
Frank Marella	Sharp
Sego Jackson	Snohomish County
Dan Phillips	4 th Dimension Computers
Ellenore Angelidies	Amazon.com
Vicki Austin	WRA

Members of the Audience:

Ned Kirk	Prima Technologies
Mark Braking	PC Salvage
Mary Atwood	AEA
Lisa Sepanski	King Co SUD
Jay Sternoff	Pacific Iron and Metal
Tiffany Hatch	Seattle Goodwill
Mo McBroom	WEC

Agenda Topic: Review meeting notes from the first meeting

- John M: add John's note from his email.
- Last page: questions from audience – export of hazardous electronic products
- Gov veto – but her message provided language of other things that can be done to address that. Other opportunities to look at to address this in the rule making process.

Agenda Topic: Review phase 1 rule Draft 2

- **Purpose:** as was last time
- **Applicability:** Did we fix it?
 - Suellen: Why is local government in there? Jay: Phase 2 will have other aspects. Local gov required to work with the retailers, consumers,
 - Would it be better to list all entities i.e. public?
- **Definitions:**
 - Discussion of including rear projection televisions added
 - 64% of televisions can be excluded with current definition of covered electronic product
 - John M: problem continues in a and d where flat panel (14%) and CRT (rapidly declining 22% market) Rear and front projection televisions and rear and front projection video displays are the rest of market (DLP, OCLS, ??) by adding front and rear projection you are inclusive.
 - Rear projection unit that does not contain a tuner (ROA-32). Needs to say television and video display device. Is that what we want to do?
 - Larry K: Infocus not engaged and never understood that it was the intent that projectors like that were meant to be included.
 - If we add the word enclosed? In the concept of the legislative intent?

- Sego: Yes.
 - Sego: Definition of flat panel television and use the common definition any enclosed television device that does not include a CRT
 - John M: totally in error
 - Vinay: may not be a flat panel.
 - Flat panel is under 6 inch thick LCD (14% of the market)
 - Sego: want to capture 100% market
 - John: need to define what a television is in all capabilities in order to capture 100%
 - Larry: Don't want it so broad that digital picture frame with Speakers gets included
 - John: many ATM have 10 inch larger screens are those included, you shake head no but under this definition those are included
 - Definition needs to be that include as CRT, flat panel, rear and front panel video display. Where the products are integrated into a larger product those would be considered for commercial application and excluded.
 - Concern is how does the recycler make the distinction of what is commercial and what is not
 - Frank: need to have list of excluded products
 - Craig: customer is CoinStar – they send boxes to us. Contains lead and other TV/monitor that are concern
 - Jay: have to go back to applicability- household schools, small business, etc probably don't have CoinStar, cash machine, ATM
 - Frank: not necessarily true any one can buy and set it up in 7-eleven type stores. Need to define in and define out.
 - Exclude Casio unit too? Yes
 - Sego: some definitions from web searching and NERC
 - Lisa define as device that would receive broadcast,
 - Don't include sound in monitor definitions
 - Eliminate radio and just say outputs
 - Jay: add clarification about rear/front enclosed devices.
- **Applicability:**
 - Mark: need to add the word covered
 - Once enters stream of commerce it is not clear where it will end.
 - In law: regardless of original point of purchase
 - Mo: memory and opinion- we want any company where product ends up in the waste stream to register, if you don't register can't sell. It doesn't make sense to distinguish from selling to covered entity or other. IF product ends up in waste stream need to do fair share
 - Frank: Internet seller in Florida buys from Japan sells to Alabama – no one registers – it is a problem in all state laws
 - New brands coming;
 - Ellenore: obligation for retailers and manufacturer need to be the same
 - John: fining/slapping of the hand is the responsibility of the state? If brand does not appear on the list? Other stores can call it in.

- How many FTE for enforcement? Jay it is in the fiscal note we have two FTE
- Mo: Retailers and manufacturers have a natural incentive to help so that level playing field
- Vickie: generally speaking people will go around the law.
- Frank: rechargeable batteries have to be registered but some retailers sell ones that aren't registered

Definitions:

- John: sometimes the brand is off the product. "Orphan" – can we expand that it is readily apparent even if brand is removed it is still responsible of manufacturer. How is brand sorter going to figure it out?
- Frank: shape, the recyclers can tell.
- Vinay: definition of computer. Concern that mouse and keyboard manufacturers don't have to pay in.
 - Defining by use and not technology – most video gaming equip have better components – Video manufacturers during bill process were aware that their products were included and think you should add them in.
- Jay_ believe the intention was to focus on universal function on like this laptop not gaming units.
- Mo: Nixon was concerned about Microsoft. I spoke with them and they thought they weren't included and therefore they did not comment. I would like them to be but they did not think included.
- Jay: why not cell phones, why not this – scope referenced Ecology study that included only computers and TV
- Vinay: box on desk at work and one under TV at home are the virtually the same
- Dan: Alienware manufactures things just for gaming – then how to define market share
- Jay: think this debate has occurred in legislature, but they did not go there. Our report suggested that they expand products but the Legislature did not go there.
- Larry: to Joe legislature game box is not a personnel computer
- Frank: Would there be list of gaming systems, so that when come into waste stream they know it is not part of program? That would help relieve these things.
- Jay: I think our definition covers this. We could do that in guidance.
- Jay: including keyboard and mice.... "and any associated same branded peripherals"
- Vinay: is peripheral defined
- Jay: if it comes in the box it is included.
- Vinay: what if it comes with a printer?
- Jay: what do you think?
- Vinay: include it.

- Vickie: so what do we do with the extra? Is Craig stuck with the cost of that?
- Craig: so do I charge for the extra?
- Larry: I am going to set up with retailers, charities, local government – you have two choices
 1. Tell customer no; or
 2. Take the mouse and keyboard and let the market place decide.

I don't think it is the intent to include mice/keyboard in weight. Maybe someone else who was there?
- Sego: I agree that the way Larry describe it the way it will play out. If it is really burdensome industry will go back to Legislature to get them included.
 - Intention was not to capture game devices, I would love it, but not intention.
 - Peripherals, can't really say no to mice/keyboard because public believes part of computer. Printers are easy to say no to. I have not heard consensus from group to give you clear feedback on that.
- Craig: agree with Larry with way play out. Yet there will be a lot of free riders. Either borne by charities, processors, collectors...
- Larry: ultimately the responsibility of manufacturer
- Frank: why not charge a fee
- Craig: Not a problem at my retail site but could be a problem for Goodwill because policy of no charge....
- Sego: They are not willing to have staff turn stuff away – bad customer service The cost of handling money is very expensive for these little items
- Frank: Wouldn't that be part of the business decision to participate.
- Vinay: Legislatively would be able to add the free-riders to the system could we add it before 2009
- Mo: if as a group we agree there is a fix this bill needs and we are united, I think it is feasible to fix as long as it does not turn into a political battle
- Dan: term recycle means turned into something else and revenue derived from that. So mice keyboard are plastic can they be recycled into something else? So it is not just cost? How much will result in revenue? How much just disposed material?
- Larry: mice/keyboard are cost because no value. May be a little copper, mixed plastic stream (Dan: not easy to extract)
- Larry: can we continue conversation on definitions Phase 2?
- Sego: It is a collector side problem to including keyboard/mouse but we think we will work it out with contracts _ talked to Goodwill and Vickie and King CO– suggest that computer not include peripherals.
- Jay we will take care of video display device in Computer definition

Enforcement:

- Mirrors language in law and gives further definition of how Ecology will be implementing those enforcement directives
- John: a retailer has 10 brands that are not covered is that a single violation? Jay: It is 100 violations.
- Vickie: A collector/transporter who doesn't register they will receive a penalty within 30 days? Jay: yes
- Vinay: can Ecology partner with another agency to help with enforcement?
- Jay: we think our system will be effective. Besides manufacturers retailers and the public
- Craig: is there anything in here that compels manufacturers to tell Ecology.
- MO: I think because it says shall in the rule Ecology must enforce.
 - Mandamus action to compel Ecology to do what they must do.
- Sego: As far as I have been able to think it through it looks good to me.
- Frank: Could a trade association sue Ecology? I can't see why not, I will get back to you.

Manufacturer:

- So am I registered during the 60 days Ecology reviews my form?
- Jay: A reasonable person would assume you are registered until you hear otherwise.
- Trade association and non-governmental organizations?
- Ellenore: is there something on the list that will say pending on the list.
- Jay: Yes
- Frank: How frequently do retailers need to look at the list? How frequently is reasonable?
- Jay: Retailer should be asking before they put product on shelf.

Fees:

Fee structure handout.

- CEA letters
- 66% computer market share 33 % white box – need to do study
- In table three wouldn't come up with complete the amount of money needed. We know that we still need to complete the list
- We can have fund deficit at end of year that is OK.
- $MCS + MT\$ / T\$$ = manufacturer market share and then fit into one of the tiers/categories
- Larry: where did the market data come from?
- Katie: PC from EP forecast, TV NPD
- Larry: question accuracy of that information. What was there definition of what providing?
- Katie: All PC sales nation-wide
- Larry: Many manufacturers here have larger market than who is covered here.

- Katie: since the definition does not matter point-of-sale and it may drift down to covered entity then we need full market share. Jay: can you give us a solution
- Larry: We are working on it.
- Mark: can we get copy of CEA letter
- John: can I hand out my data; it is not to make waves but to work something out here.
- Vinay: what would be basis for allocating market share? Weight, \$ or unit - I feel that \$ is the lowest of three because less accurate cheaper CRT devices are more expensive to recycle but are cheaper. We suggest weight and if not weight unit.
- Larry: First should be weight. But disagree that second option is unit.
- Frank: \$ amount is the worst; weight is best but not sure we can get it. But unit is second choice.
- John: From TV stand-point recommend unit because at Fed level done at unit. By law TV have to be branded and has serial #. Cumbersome not to use units because we have to have available to FDA and FCC.
- Jay: how do we get our hands on that?
- John: Don't believe there is any manufacturer of TV who wouldn't prefer unit
- Data is available if can't get it proprietary.
- IF manufacturers were assured release of numbers would not be released they would give them.
- Larry: this conversation points out how problematic all three are. Costs to do business the same. That is why most states have flat amount. Legislature wanted to not burden small retailer. Everyone pays set amount unless sell less than X units then you get up to 100 percent relief. Representative of annual sales. Representative not exact. Think about that solution.
- Cathy SBEIS cost per employee compare largest 10% with small business (50 or less) if disproportionate impact with have to mitigate. It is rare we can spread evenly based on employee but this law requires us to look at sales.
- Sego: Less tiers or two tiers?
- Larry: Less tiers. Maybe make small register with no \$, 500 – X small fee.
- Jay: what is the max going rate? UNITS
- Larry: when we look at \$ need and basing it on 25 big company – those aren't going to change a lot so you need to meet need and can't exceed too much. The more stable the easier to manage.
- Vinay: don't agree with approach. I think tier workable if calculated properly. I believe # will go on as the list becomes clearer. Within large box there is still a lot discrepancy. Dell sells 4 times as much as us. Weight will represent better.
- John: TV could be unit and PC could be different. I would presume TV would prefer unit.
- Frank: I think weight would be tough to get. I think it would be the best but it would be tough to get.
- Vinay: trade-off in cost if too costly to get weight then use unit
- John: plus to use units is even if dollars starts with units. Something to go back on and compare.
- Jay: what is the most trusted data source?

- John: importation records, testing labs, federal filings. UL and ETL (national): directly from manufacturer; FDA; and then extrapolate down to WA based on population
- Not NPD.
- What if required manufacturers to supply that?
- John: I don't see a problem
- Sego: says annual sales in legislation. If go down this route and hit dead-end go back to what you presented and go back to \$.
- Frank: Unit numbers are available. We would want something that said individual numbers would be kept numbers confidential.
- Larry: what if I want to object to it and you can only tell me my number it is hard to object.
- Cathy: It is hard to protect the data due to change in law going to July 1.
- Nels will get back to us.
- Jay: because retailers will be manufacturer in certain situations what is your perspective?
- Mark: units is something new, don't think it would be a problem/issue. Haven't brought it up with them. On \$ - that is what we were suggesting. I will find out if they like unit.
- Vinay: is it the sale price at stores or is it our revenue/
- John: it is average sales.

John's handout: June 23, 2 006 from Prima Technology Inc.

- Point 1: Need to put some of the responsibility back on the manufacturer to sign-off and say data about their company is true valid
- Point 2: 8 of 10 biggest retailers in US are responsible for own brand.
- Point 3: other unique brands – black Friday, Thanksgiving event, very low price promotional product – one time buy – these brands will be difficult to track
 - Received off for 1.2 million units for Black Friday – quantities are huge
- Point 4: issues in 3 are costly to track down. Costs to track down should be shared by retailer.
- Point 5: List of retailers and brands they have corporate control over. (specific to TV, PC, and video display)
- Ellenore: aren't most working with major manufacturer to produce these products?
- John: not necessarily
- Best way to get data is from the retailer responsible for own brand name.
- When they house brand they are by definition in the law a manufacturer.
- Jay: it seems split unit and dollar – tiers can be flattened – perfect would be weight but impossible to get. What we would like to know (Yes or No), is there one good reliable data source?
- Larry – no Frank – no \$ no –units John - FCC? Vicki? Vinay – don't know Craig? Dan
- Vinay: it doesn't seem split between \$ and unit it seems more preferred unit
- Larry – it depends

- Unit – Frank, John, Vinay, Craig, and Dan – relative to each other unless selling higher than average or lower than average and then have a disadvantage. If mix TV and computer together computer unfairly penalized.
- Vinay – don't necessary agree we are being penalized by \$100

Audience:

- Recycling industry: TV recycling is more costly than computer.
- Frank: argues towards basing it on units than costs.
- Recycling industry: John – where did you come up with relationship to units/tons in your handout?
- John: CRT 32lbs – all figures are conservative
- RI: if group could agree that TV is separate than computer and come up with annual study to come up with per lb basis
- John: production of CRT is coming to a halt
- RI: if we do our assessment today –

Mark: should there be one fee for TV and one for Computer

Mo: Enforcement – Black Friday situation could be a potential loop hole with 30 day lag by providing notice. Maybe a pre-notice to all retailers to remind them they have to register.

Brand labeling:

No comments

Manufacturer Registration:

- Vinay: picture of brand labels why?
- Jay: insignia rather than a name
- Vinay: We think above the law –
- Clarification of the picture language.
- Larry: Tandy is one of our brands but I have never seen it.
- Vinay: Require for products made after this date.
- John: TV is law that they are labeled.
- Craig: talking about doing it for the sorters.
- Frank: if using it for the sorter you need them for the older models older
- Jay: we start developing our data base.
- Larry:
 - Getting someone to sign that they certify complete information – it is to the best of ability. “best of my knowledge”
 - Registration itself – Ecology has 60 days and is expecting less than 200 manufacturer. Is there a way to shorten the 60 day time period If you submit your registration it is assumed you are registered even
 - Jay: “Upon receipt the registration you are considered in compliance until notified otherwise”
 - 13 – no registered manufacturers – Jay – we have to look at reasonableness and we will do that

- Jay: First year registration fee covers an 18 month period.
- Larry: you mean starting July 1.
- Jay: Under the tiered approach we can:
 - 1. self –select and send your fee
 - 2. We can assign the fee and send bills and then HP can appeal
- Vinay: we would hope 2 would encourage companies comply rather than picking their own fee because they most likely would pick a smaller category and try to justify
- John: I agree with that
- Larry - 14 –
 - The method of coming back into compliance is to complete the registration requirements.
- Manufacturer should never pay more for orphan good costs if the costs for his goods are less. – They are exempt.
- Jay: discussion for authority
- John: if you are going to bracket so low it should look at orphan costs.
- Frank: there should be a low registration fee for everyone, if you can make money you should pay some small fee
- Dan: \$150 to get on the list is fair. Probably have other benefits to get them on the list.
- Agreement that assigning the rate is acceptable with appeal process.
- Larry: by June 1 – new manufacturer must register when? Prior to sale? 30 day prior?

Manufacturer Form:

- If I pay licensing fees for a brand that I manufacturer and don't own and don't have 5% can I do independent plan? Jay – no but could join together with others.
- Sego List:
 - Brand names you are legally responsible for
 - Brand names no longer offered for sale that you are legally responsible for
 - Brand that you manufacturer but not legally responsible for and who is legally responsible.
- Vinay: What benefit does year have?
- Katie: It was for determining if eligible for independent plan? Can you put have you been operating for more than five years?
- Sego: One company was responsible for some for certain years and another companies other years
- Vinay: Not sure what it tells Ecology
- Sego: during what years if any manufactured non-branded or white box products. May be useful to capture data for other reasons.
- Frank: Have decided for first year? Can you add a don't know?
- Jay: I think it is wiggly.
- Frank: I really won't enough time to analyze which way going to go. Leave it blank or draw box. Especially if certifying?
- Ellenore: does not see where in the bill it says that the company licensing the brand is on the hook.

- John: Who owns Advent? Jay: Audiovox. So Audiovox is responsible.
- Sego: Assume that this company information would be filled out once
- Ellenore: You have to be doing something else besides licensing, you have to be manufacturing, assembling, and reselling.
- Jay: This has been our interpretation. We are not going to look at each TV to determine responsibility.
- John: we wanted to assume that responsibility. If you don't want us to that is WA right. I think you are going down a pathway where low cost over sea manufacturer will bring it into the state and we have no way to cover. I want it on record that we wanted to have that responsibility.
- Jay: when your contract is up?
- John: Normal contract is 5 years.
- Jay: well that is not long in life of these products
- Mo: Are you planning on seeking approval on independent. At this time I have no intention at this time to go for independent plan
- Frank: hard to get someone to sign off on it.
- Jay: This will help the authority identify the board members.
- Vinay: You will need to submit the form again prior to doing anything.
- Vicki: Ecology needs to get a legal opinion on who the manufacturer is?
- Jay: we already have but we will talk with the AAG again.

Audience: Nancy from AEA: think of this as whole system issue. The manufacturer is going to bear costs. The more streamlined you can make this it will help keep costs down.

Transporter/collector:

- Frank: Does Ecology have the authority to wave the requirement for plan information for the first year.
- Vicki:
 - Add in the other commodities.
 - People who get cc permit have to liability insurance so get level on the form.
- Cathy: UTC told us that G permit is excluded by only listing cc permit and we are precluding private
- Vicki: What do they have to have to have private truck?
- Cathy: Need to have a license for truck for driver and proper insurance to drive that truck.
- So Private carrier can be added? Yes – compliant private carrier. Private carriers have to be working for company that is collecting.
- Goodwill: we are licensed to transport but we were exempt from recent bill language. So we shouldn't be excluded from.
- Craig: we don't have cc # either.
- Larry: What happens when I contract with Craig and I want to maintain ownership of material?

- Craig: How long? Larry: I want to get plastic bag to put in product. Craig: that looks more like processor for hire. Larry: we want to maintain chain of ownership. Does that put you in a different bracket Craig? Vicki, that could. Craig: there is a more contractor.
- Look at definition for transporter in 70.95 to see how they match up.
- Audience: if not receiving direct compensation for transporting but instead it is processing then not in violation in cc permit.
- Vicki: there was a letter that went out the first time with letter that we may need to give copy of letter to panel.
- Sego: under collector change facility to location
- Larry: what happens if miss September 1 date. There is a penalty but treated as new registrant.
- Sego: (4) sending us rewrite language – reimbursement for their services for the cost of collecting these products.
- Larry: bill says compensate.
- Sego: operating permit taken out put any applicable permit information.

Processor registration:

Vinay: any restrictions on what type of labor?

Jay: Law says can't use prison labor.

Liability.

Vicki: 70.95 gives Ecology the authority to assign financial assurance requirements to processor.

Jay: the standards can look at financial assurance for processors. We may need to take this out of phase 1.

Jay: it wouldn't be wise for plan to contract with processor without it.

Vicki: why wouldn't you include some sense that this is someone worth dealing with.

Jay: we will look at pulling it out of Phase 1.

Phase 2 rule content:

Vinay: what is share payments the balancing approach

Jay: the over performer/under-performer True-up.

We are looking at Wednesday Sept 27 for the next meeting. – Here at Ecology. We will expand representatives.

Jay: Who else around table?

- Vinay: AEA?
- John: licensor – General Electric; Siemens; Thomson
- Vinay: ELA – electronic leasing association?
- Sego: local government – institutional material entered in the system. That would be a covered entity under the bill (rural, eastern Washington can give recommendations).
- Jay: school administrators Sego: think they would go wild for something that has small interest. Need to be outreach to schools. Jay: let's them decide.
- Mo: Basil action network
- Jay: would it make sense for small focus group?
- Larry: it depends I would like all

- Vinay: yes I would too.
- Jay: small groups that present to larger.
- Sego: small collectors - can recommend – Goodwill
- Larry: How many meetings?
- Jay: anticipating four. May have to have meetings during session.
- Vicki: end of first week prior to session.
- Larry/Frank: that is the consumer electronic show.
- Mo: what best way to communicate about gaming industry? Maybe we should have gaming company at table.
- Jay: in term of rule – what is the general feeling about the rule? As focus group in good faith is there any landmines
 - John: licensing issue. I have no CRT product due to license. Thomson siemens, GE have no factories. Not mentioning any brands that also license like Audiovox.
 - Jay: GE had plants 20 years ago.
 - Larry: HP doesn't have any factories either.
- Nancy: considerable comment on fee from manufacturers that weren't here.
- Gaming question:
 - Mo: my thinking has evolved/changed over time. When lobbying there was an assumption that X box and other devices were different from computers. But what hearing more and more, over time gaming devices are no different than computers (little) so no logical line to draw. When you look at way bill reads, it does not exclude gaming. Can Ecology that through rule making keep language broad enough so that as gaming equipment that is more like computers can be brought in. It is said that legislature is broad so that agencies can have some flexibility.
 - It is more a questions of how marketed.
 - Larry: so if you go with form – picture frame example has to be included.
 - Mo: I think it is challenging. Can Ecology explore it by function?
 - Sego: I am wondering if way in rule to address it openly so that Ecology is empowered to include them if it is clearly meeting computer definition.
 - Vinay: I think MO on right track. I think Larry is right about picture frame. Tablet PCs. I wonder if Ecology can keep system up to testing up to categorize computers as sold to state. Picture frame vs. game box.
 - Nancy: AEA would not support allowing agencies such great flexibility.
 - John: I would support Mo. There are other issues. Need to be defined, picture frames are in fact video monitor. DVD players on airplanes don't have tuner but are LCD video display. If not defined, eliminated or brought in, go through recycling centers and decisions will be made. Because coming in would be best to define. If packaging is the only difference needs to be clarified.
 - Jay: how would you clarify
 - John: it is a video display so it in.
 - Larry: we need to keep in mind the original intent of leg. It was not to include these things.

- Mo: I agree 100% when you think of gaming device as something different than gaming device but when you think it is the same ...by excluding gaming devices specifically I am not sure way to go.
- Sego: I am not sure what “gaming devices” rang is. If left flexible maybe be an appeal process so that if type of product is included way to appeal it.
- Jay: I will talk this over with bosses and see how far Ecology will go.
- Dan: not just the clock with chip but media center devices acts as internet plays DVD but it is a home computer. Special purpose computer.
- REPC: is it clear that the toxics are the same in the computers and televisions and this is only a piece.